

**THE LABOR COMMISSION  
WORKERS' COMPENSATION ADVISORY COUNCIL**

**Wednesday, July 11, 2012 – 12:00 P.M.  
Room 319, Heber M. Wells Bldg.  
Salt Lake City, Utah**

**The following Advisory Council members were in attendance:**

David Bird, Esq., Parsons Behle and Latimer  
Janet Moffit, Workers Compensation Fund  
K. Dawn Atkin, Esq., Atkin & Associates  
Reo Castleton, President, SL Cnty Fire Dept Local 1696  
Dave Davis, President, Utah Food Industry Association  
Brian Kelm, Esq.  
Richard J. Thorn, President/CEO, Associated General Contractors - Utah Chapter  
Edward Holmes, M.D., Summit View Medical  
Thomas Bingham, President, Utah Manufacturers Association  
Brett Barratt, Utah Dept of Insurance

**The following Advisory Council members were excused:**

Rep. Mike Morley  
Kathleen Bissell, Liberty Mutual  
Jeff Rowley, Risk Manager, SLCounty  
Ralph Astorga, President, USWA Local 392  
Sen. Karen Mayne  
Brandt Goble, Painters and Tapers Local 77

**Others Present:**

Sherrie Hayashi, Commissioner  
Alan Hennebold, Deputy Commissioner  
Ron Dressler, Director, Division of Industrial Accidents, Labor Commission  
Elena Bensor, PIO, Labor Commission  
Matt Gephardt and film crew, KUTV "Get Gephardt"  
Dori Petersen, Esq.  
Kristy Bertelsen, Esq.  
Ty Berrett  
Glenn Wright  
Pete Groesbeck, Labor Commission  
Linda Duvall, Labor Commission  
Stan Mead  
Karla Rush, Labor Commission  
Aurora Holley, Labor Commission  
Maggie Karpeck, NCCI  
Deidre Marlow, Labor Commission  
Heather Gunnarson, Labor Commission  
Diana Moulard

**WELCOME**

**Welcome –Commissioner, Sherrie Hayashi** brought the meeting to order at 12:05 p.m. Commissioner Hayashi requested that everyone make sure that they sign the roster. She also requested that when members or guests speak that they state their names and speak up so that the recording equipment picks up their comments.

### **1. Miscellaneous Business:**

Commissioner Hayashi asked if everyone had an opportunity to review the minutes of the April 11, 2012, Advisory Council. Dave Davis made a motion to approve the minutes, Dawn Atkin seconded the motion. The voting was unanimous.

### **2. Reappointment of Council Members –**

Commissioner Hayashi stated that the following council members have been reappointed to the council: Dave Davis, Dawn Atkin, Brian Kelm, Brandt Goble, and Dr. Ed Holmes. Commissioner Hayashi stated the Tom Bingham is retiring from the Utah Manufacturers Association, and Todd Bingham will be appointed in his stead to the council. She indicated that all of these members had agreed to serve another term on the council.

### **3. Workplace Safety Grant Update – Elena Bensor**

Elena Bensor handed out a spreadsheet with information on the current year grants. She also explained that a policy has been established for submission of late invoices and quarterly reports. She stated that funding may be in jeopardy with late submissions. She thanked those council members that have participated in the review of the applications. She also indicated that the submission of applications is up and thanked the council for their efforts in spreading the word about the availability of grant money.

### **4. Division Director Update – Ron Dressler**

Ron Dressler stated that work on the Medical Fee Guidelines and rule are in progress and will be available at the October Council Meeting. He also asked that the council provide him with any questions the council would like to submit to Deloitte, the ERF/UEF actuarial firm. Deloitte is working on providing a better picture, particularly of the medical expenses that ERF is paying.

### **5. Adjudication Division Update – Commissioner Hayashi**

Commissioner Hayashi provided a brief summary of the current situation with the Adjudication Division. The following handouts were provided: Press Release, Labor Commission Summary, a redacted copy of the Performance Audit, and the ALJ Survey Results for 2011 Calendar year.

Commissioner Hayashi summarized the performance audit results and the actions being taken by the Commission regarding the interactions of the ALJ's and medical panels. She stated that the expectations of the Commission have been both verbally and in writing provided to the ALJs. She stated that the personnel actions are not complete, and asked that the Commission be allowed to handle them as necessary.

Dave Davis asked for clarification of the parameters of the audit. Sherrie Hayashi explained that the auditors looked at medical panel cases over the last three years. Alan Hennebold stated that page 7 of the audit report stated the parameters that the auditors chose. Alan Hennebold also stated that the scope of the audit was determined by the auditors; the Commission gave them the problem and the auditors determined what they would look at.

Dave Davis asked for a synopsis of the changes that were made to the medical panel reports. Sherrie Hayashi stated that the findings of the audit were that the ALJs did not act maliciously or with intent to influence the outcome of the report. Brian Kelm stated that the differences were indicated on page 1 paragraph 4.

AN ERROR WAS DISCOVERED WITH THE HANDOUT OF THE PERFORMANCE AUDIT. THE COUNCIL TOOK A BREAK TO CORRECT THE HANDOUT.

Discussion continued.

Sherrie stated that the nature of the changes made to the medical panel reports is found on page 10 and the examples listed are not comprehensive, but they are accurate as to the types of changes made to the reports.

David Bird requested clarification of the handouts. Sherrie stated that the single spaced handout is the Labor Commission's summary of the situation. David Bird stated that the statement that the actions violated state law was a pretty significant problem. There was destruction of evidence and a cover-up of that destruction.

Jan Moffitt from the Workers Compensation Fund stated that this situation has created a loss of confidence in the Adjudication process and that the reinstatement of the ALJs creates a loss of trust between practitioners and the system. She also stated that WCF felt that they would not be doing their job for their clients if they allowed cases to be heard by these ALJs while disciplinary actions are pending. She also stated that as officers of the court, the unethical behavior cannot be ignored and bar action should be considered.

Dawn Atkin stated that the Medical Panel reports have been problematic for a long time. The ALJs appeared to be trying to get better reports from the panels, not different reports.

David Bird stated that the problem is the destruction of evidence and instruction of staff to remove entries from the database regarding receipt of the report. These are serious violations.

Jan Moffitt stated that there were other ways to handle the situation; transparency is the issue.

Sherrie stated that she understood the practical issues that this situation may bring, however, the Commission is following DHRM guidelines in dealing with the situation. Dave Davis asked if a general explanation of DHRM guidelines could be given. Sherrie explained that one ALJ is a career service employee and followed supervisor direction, while the Presiding ALJ is an at-will employee.

Dave Davis clarified that the ALJ took the suggestion to her supervisor who approved the action. Sherrie agreed that this was an accurate picture. Dave went on to state that the initial report was shredded, staff was instructed to change the database and the parties were not notified of any of those actions. Sherrie agreed.

Dawn Atkin stated that the council needed time to thoroughly read the audit report.

Sherrie briefly explained how the database works. Action A (receipt of medical panel report) triggers Action B (reminder for some action in the future). Alan Hennebold explained that when a medical panel report is received it begins a time limit for responses to the report, so if a report is received, but not considered to be the official report, the time limit for responses should not begin.

Brian Kelm stated that the manner in which this situation was handled was not transparent. He stated that it was possibly an attempt to insulate the panel from the attorneys. The intention to get a better report was good, but the manner was poor.

David Bird asked about the redactions. Sherrie explained that the redactions were done after the privacy of the individual was weighed against the public interest. Dave Bird questioned why the ALJ survey results were not incorporated into the performance plans of the ALJs. Sherrie explained that the council has been given summaries of the survey results in years past. She stated that because the response to the ALJ Survey

is very small, she has instructed the Division Director to take the results with a grain of salt and with other evidence incorporate the results into the performance plans.

Dave Davis thanked the Commissioner for the prompt response to the situation and notice to the council. He stated that on behalf of his organization, he will be watching for the completion of the personnel actions.

Sherrie stated that the Commission will deal with the various resulting issues from this situation as the issues arise.

Reo Castleton asked if the panels were new to the process and if training was needed. Alan stated that one of the panelists was experienced, while the others were relatively new (about a year). The changes that were made were mostly terminology or semantic changes. Sherrie stated that page 11 of the audit report stated the experience of the panels involved.

Dawn Atkin stated she was pleased to see the recommendation of transparent training of medical panels. She stated that there has been a difficulty with definitions between medical and legal professionals, i.e. medical causation.

Sherrie stated that the medical panel training would be on the agenda for the next council meeting: how should it be done – through the medical committee or through forums.

Alan Hennebold stated that medical panels are at the end of a long process. The better findings from the ALJ and better questions to the panel are also needed to improve the medical panel reports.

David Bird requested notice of the conclusion of the personnel actions. Sherrie agreed to provide the council with this information.

## **5. Other Business – Commissioner Hayashi**

Commission Hayashi reminded everyone of the next Council meeting, October 10 at noon.

Dawn Atkin moved to adjourn the meeting. Reo Castleton seconded the motion. Voting was unanimous.

Meeting adjourned at 1:30 pm.